

FILED & ENTERED

FEB 09 2022

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
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**NOT FOR PUBLICATION**  
**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**LOS ANGELES DIVISION**

In re:

ANTHONY ROBERT WAFFORD,

Debtor.

Case No. 2:19-bk-15197-RK

Chapter 7

Adv. No. 2:21-ap-01102-RK

**ORDER DENYING PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT WITH LEAVE  
TO AMEND**

JEFFREY W. COWAN,

Plaintiff,

vs.

ANTHONY ROBERT WAFFORD,

Defendant.

This adversary proceeding came on for hearing on February 8, 2022 before the undersigned United States Bankruptcy Judge on Plaintiff's motion for summary judgment. Appearances were made as noted on the record.

For the reasons stated at the hearing and in the attached tentative ruling issued by the court and posted on the court's website before the hearing, the court denies the motion with leave to amend.

1 The court further orders that the deadline to file and serve pretrial motions is  
2 extended to April 30, 2022, that plaintiff may notice a renewed motion for summary  
3 judgment for hearing before the court on June 21, 2022 at 2:30 p.m. and that a further  
4 status conference in this adversary proceeding is set for June 21, 2022 at 2:30 p.m.

5 IT IS SO ORDERED.

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Date: February 9, 2022



Robert Kwan  
United States Bankruptcy Judge

ATTACHMENT – TENTATIVE RULING

RE: PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

In seeking summary judgment on the claim under 11 U.S.C. 523(a)(6) in this case, plaintiff apparently relies upon the state court judgment that he obtained in favor of his client against defendant, which has been assigned to him. The court extensively quotes from the opinion of the Bankruptcy Appellate Panel of the Ninth Circuit in Plyam v. Precision Development, LLP (In re Plyam), 530 B.R. 456 (9<sup>th</sup> Cir. BAP 2015), which it finds applicable to this case:

Summary judgment is appropriate where the movant shows that there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(a) (applicable in adversary proceedings under Rule 7056). The bankruptcy court must view the evidence in the light most favorable to the non-moving party when determining whether genuine disputes of material fact exist and whether the movant is entitled to judgment as a matter of law. See *Fresno Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125 (9<sup>th</sup> Cir.2014). And, it must draw all justifiable inferences in favor of the non-moving party. See *id.* (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)).

A bankruptcy court may rely on the issue preclusive effect of an existing state court judgment as the basis for granting summary judgment. See *Khaligh v. Hadaegh* (In re Khaligh), 338 B.R. 817, 831–32 (9<sup>th</sup> Cir. BAP 2006). In so doing, the bankruptcy court must apply the forum state's law of issue preclusion. *Harmon v. Kobrin* (In re Harmon), 250 F.3d 1240, 1245 (9<sup>th</sup> Cir.2001); see also 28 U.S.C. § 1738 (federal courts must give "full faith and credit" to state court judgments). Thus, we apply California preclusion law.

In California, application of issue preclusion requires that: (1) the issue sought to be precluded from relitigation is identical to that decided in a former proceeding; (2) the issue was actually litigated in the former proceeding; (3) the issue was necessarily decided in the former proceeding; (4) the decision in the former proceeding is final and on the merits; and (5) the party against whom preclusion is sought was the same as, or in privity with, the party to the former proceeding. *Lucido v. Super. Ct.*, 51 Cal.3d 335, 341, 272 Cal.Rptr. 767, 795 P.2d 1223 (1990). California further places an additional limitation on issue preclusion: courts may give preclusive effect to a judgment "only if application of preclusion furthers the public policies underlying the doctrine." In re *Harmon*, 250 F.3d at 1245 (citing *Lucido*, 51 Cal.3d at 342–43, 272 Cal.Rptr. 767, 795 P.2d 1223); see also In re *Khaligh*, 338 B.R. at 824–25.

1 The party asserting preclusion bears the burden of establishing the threshold  
2 requirements. In re Harmon, 250 F.3d at 1245. This means providing "a record  
3 sufficient to reveal the controlling facts and pinpoint the exact issues litigated in  
4 the prior action." Kelly v. Okoye (In re Kelly), 182 B.R. 255, 258 (9th Cir. BAP  
5 1995), aff'd, 100 F.3d 110 (9th Cir.1996). Ultimately, "[a]ny reasonable doubt as  
6 to what was decided by a prior judgment should be resolved against allowing the  
7 [issue preclusive] effect." Id.

8 In re Plyam, 530 B.R. at 462.

9 The moving papers do not meet the summary judgment standard because they do not  
10 discuss the elements of plaintiff's claim under 11 U.S.C. 523(a)(6) and how they are met  
11 by the evidence in this case, which in this case, would be the findings of the state court  
12 for its judgment which may be entitled to preclusive effect under collateral estoppel,  
13 which is also not discussed in the moving papers. In summary, plaintiff has not shown  
14 that he is entitled to judgment as a matter of law on grounds that the state court  
15 judgment in his client's favor against defendant is entitled to preclusive effect on his 11  
16 U.S.C. 523(a)(6) claim as there is no factual and legal analysis showing that the  
17 elements of the claim are satisfied by the factual findings in support of the state court  
18 judgment. There is no discussion of how the prerequisites for applying the doctrine of  
19 collateral estoppel are met here. The discussion of 11 U.S.C. 523(a)(6) is conclusory  
20 and without the necessary supporting analysis as shown by the conclusory statement of  
21 uncontroverted facts and conclusions of law, which are insufficient to support summary  
22 judgment. Cf. Richards v. Bishop (In re Bishop), Adv. No. 2:16-ap-01383-RK, 2018 WL  
23 1069145 (Bankr. C.D. Cal. Feb. 22, 2018); International Business Investment, Inc. v.  
24 Park (In re Park), Adv. No. 2:14-ap-01835-RK, 2017 WL 3017087 (Bankr. C.D. Cal. Jul.  
25 13, 2017); Shim v. Lee (In re Lee), Adv. No. 2:13-ap-01420-RK, 2015 WL 1299747  
26 (Bankr. C.D. Cal. Mar. 19, 2015). Under 11 U.S.C. 523(a)(6), an individual debtor may  
27 not discharge a debt to the extent that such debt was "for willful and malicious injury by  
28 the debtor to another" or "to the property of another." Petralia v. Jerich (In re Jercich),  
238 F.3d 1202, 1208 (9th Cir. 2001). The elements of a claim under 11 U.S.C.  
523(a)(6) of willfulness and malice are not meaningfully analyzed, that is, specifically  
identified and shown how they are met by the evidence. Plaintiff's discussion of post-  
judgment events in his moving papers is immaterial to showing whether the debt was  
"for willful and malicious injury by the debtor to another" to prove his claim under 11  
U.S.C. 523(a)(6).

23 The court may properly limit its decision to the claims and arguments presented by the  
24 parties in their moving papers. As articulated by the Supreme Court:

25 In our adversary system, in both civil and criminal cases, in the first instance and  
26 on appeal, we follow the principle of party presentation. That is, we rely on the  
27 parties to frame the issues for decision and assign to courts the role of neutral  
28 arbiter of matters the parties present. . . . [A]s a general rule, "[o]ur adversary  
system is designed around the premise that the parties know what is best for

1           them, and are responsible for advancing the facts and arguments entitling them  
2           to relief."

3           Greenlaw v. United States, 554 U.S. 237, 243-244 (2008), citing and quoting Castro v.  
4           United States, 540 U.S. 375, 386 (2003).

5           Because plaintiff has not met his initial burden of showing that summary judgment  
6           should be granted, the court need not reach the issues raised by defendant's arguments  
7           in opposition or on plaintiffs' request for FRBP 9011 sanctions. The summary judgment  
8           motion should be denied without prejudice and with leave to amend. Appearances are  
9           required on 2/8/22, but counsel and self-represented parties must appear through Zoom  
10          for Government in accordance with the court's remote appearance instructions.